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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO.

Rev. Donald L. Jackson

V. Petitioner

The Statler Foundation, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner prays the Court for a Writ of Certiorari directed to the United States Court of Appeals for the Second Circuit, to the end that this Court may review a decision which that Court has rendered in a case involving the parties above-named. And the petitioner respectfully shows to this Court:

THE OPINIONS AND ORDERS OF THE COURTS BELOW

The opinion of the United States Court of Appeals for the Second Circuit, September 18, 1974, dismiss the Appeal from the United States District Court for the Western District of New York for lack of jurisdiction, granting two of the defendants costs

JURISDICTION OF THIS COURT

Jurisdiction to review the Judgment of the Court of Appeals is conferred on this Court by the provisions of 28 U.S.C. 1254 and 28 U.S.C 2350.

STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Plaintiff brings suit against 12 organizations that holds Tax Exemption from United States Government and Tax Exemption from the State of New York, whom all discriminated against Plaintiff for the sole reasons Plaintiff was a Black man and Plaintiff was Poor. That these 12 Tax Exempt organizations have held Tax Exemption status combined adds up to over 288

years. In this 28ó years these organizations have never conducted an election of officers, whereby the public could make nominations and vote These foundations results in only members of their family or officers of a corporation all who must be Wealthy to be a Trustee or Director of these 12 Organizations. That none of these organizations will invest any of their assets in Black businesses. Their excuse is they are afraid they may lose money. Each of these 12 organizations financial report shows they carry loss in their investments each year. The Emerson Foundation has carried loss per year over 100 thousand dollars. That all of the 12 defendants foundations discriminate against Plaintiff, in employment, the right to vote and hold office, in grants and investments and in the Goodyear Foundation, also because Plaintiff is a "Male". That these 12 Tax Exempt organizations violate constitutional provisions, Civil Rights Act and other State and Federals Laws.

2. Is it "USURPATION OF POWER" by District Judge John Curtin, to order "Further proceedings in Civil 74-185 are stayed until further order of the court..." Dated May 6, 1974. On August 5, 1974, I appeared in the District Court, asking that Three-Panel -Court be appointed. Judge Curtin, would not appoint the Three-Judge Court and reimposed his stay. However after I had left the Court on August 5, 1974, Judge Curtin assembled attorneys and instructed them, "Judge further advised the assembled attorneys that in the event that they received any further papers in 74-185 from Reverand Jackson they should return same to him, as all matters have been stayed."
I was not informed of this Order by the Court, the first time I heard of it or read it was attached as Exhibit "E" as "Memorandum" filed with papers by the Law firm Jaeckle, Fleischmann & Mugel, in their Motion papers to United States Court of Appeals Second Circuit, requesting Petitioners Appeal be dismissed dated September 18, 1974. The original lawsuit was filed in

United States District Court for Western New York, in 1971. Judge Curtin Dismissed the lawsuit in 1973, an Appeal was made to United States Court of Appeals for Second Circuit, they Reversed and Remanded the case back in a landmark decision (Jackson vs. Statler Foundation 496 F. 2d 623)(1974). That United States Court of Appeals Second Circuit, stated 496 F. 2d at 626, "Further, the district court should consider requesting that counsel represent appellant. In this regard we note that if appellant's foundation is incorporated it may only appear with counsel." I obtained counsel, and had him to leave all reference of my foundation out of the amended complaint. I continued to inform counsel, we were waisting time, for never in history, has a Black man won a damages lawsuit in that Court.

My plan was to have a Three-Judge-Court appointed, and amend my papers listing Judge Curtin as a Defendant. Judge Regan, the Surrogate Judge, appoints Trustees to the Statler Foundation, he was named a Defendant. Judge Curtin, appoints one of the Directors of Defendant Buffalo Foundation. The Buffalo Foundation, has

operated for over 52 years, without a Black Trustee, Director, Officer or employee and never has invested any of its assets in Black businesses. The same Director appointed by Judge Curtins Court, is also a director of another foundation that also discriminates against Black people.

The Motion was filed for permission to serve Amended complaint. Judge Curtin reserved decision. There was no opposition voiced by any of the defendants attorneys.

I was aware of the fact that because Judge Curtin, was so involved with Attorney Mahoney, a Trustee of the defendant Statler Foundation, and Counsel for the Statler Foundation, Attorney Peter Crotty, was the Chairman of the Trustees of the Statler foundation. It was these two who recommended Judge Curtin to United States Attorney, and later Peter Crotty, resigned as Democratic Chairman of the County Democratic Party, to take the appointment of Federal Judge, something came up barring Mr. Crotty, Mr. Crotty, then recommended Judge Curtin to be the Federal Judge. These three are the best of friends, they visit each other homes.

It seems to be common knowledge that Attorney Mahoney has never lost a case before Judge Curtin. Considering these facts and Judge Curtin bias against me for attacking one of his invested intrest, that it was impossible for me to obtain a fair hearing before Judge Curtin. I then commence working on another lawsuit with some added defendants and on the 26th Day of March 1974, the lawsuit was signed and acknowledge and mailed to United States District Court for the District of Columbia, indicating my reason for filing this lawsuit in that Court. The lawsuit was received in Washington, D. C. Court on March 28, 1974. Since I had a note to the Judge attached to the lawsuit, that it was impossible to obtain a fair hearing, here in Buffalo, someone telephone from District Court in Washington, D. C., to the District Court in Buffalo, which motivated Judge Curtin, to authorize service of the Amended complaint on March 29, 1974. Judge Curtin's decision dated May 6, 1974, he states that the same date he gave permission to serve Amended complaint Plaintiff, file suit in District of Columbia, which statement is not true.

That Judge Curtin's Order dated March 29, 1974, allowing Amended complaint be served, stated a copy of the order must be served with each complaint and that all named defendants had to be served not later than April 15, 1974, and each defendants time to answer was extended to July 29, 1974. I carried the Summons and Complaints to U. S. Marshall's Office two weeks prior to the April 15th date line. I explained to the Clerk or Deputy the Order of Judge Curtin, that the service had to be completed by April 15. I returned to the Marshall's Office on April 15th, and inquired if the Summons and Amended Complaint been served. The same lady presented the file with the Summons and Complaint with a hand written note attached to the Summons & Complaint stating that the Summons & Amended Complaint should not be served until after April 15, 1974, and I was informed that the instructions came from Judge Curtin's office. The Summons & Complaint was served after April 20th. Again we find a secret Order to aid or help the defendants by Judge Curtin, to further protect his invested intrest and to Deprive

Petitioner "Denial of Due Process and Equal Protection of the Law"
Judge Curtin to circumvent obeying State and Federal Civil Rights Laws and to prevent a Summary Judgment against his friends especially to the Buffalo Foundation, who is a defendant in this lawsuit, and Judge Curtin appoints one of the Directors of the Defendant Buffalo Foundation, and to maintain rigid policy never to allow a Black man to win money damages against a White person, Judge Curtin issued the Order Staying All Proceedings, and will not give an Appealable Order to protect his invested intrest.
The other lawsuit No 71-592, that Counsel was handling, Council and myself signed a letter to Judge Curtin, informing him that no further appearance would be made in that lawsuit, for he was withdrawing as Counsel. When the case came up, appearance was made by Petitioner. Judge Curtin, would not dismiss the lawsuit, for this may be an appealable Order. Judge Curtin, adjurned the case two months to December 11, 1974, to further protect his invested intrest. Judge Curtin, is keeping both cases on a Rubber string to prevent either of them from being appealed.

Judge Curtin, by Staying Proceedings prevent himself from being added as a defendant or called as a witness.

3. Did Judge Curtin violate 28 U. S. C. 455:

> "Any justice or judge of the United States shall disqualify himself in any case in which he has a concerned in intrest in any suit, has been counsel is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein."

4. That United States Supreme Court is asked to grant Certiorari, to review the important question, that provisions of 42 U. S. C. 1971, requies that within twenty days after service of the complaint, a request be filed with the Clerk of the Court for a Three-Judge-Court, that request was submitted to the Court three times in this case. Judge Curtin ignored the request and Ordered a Stay of All Proceedings six months have passed, the section provides:

> "It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every

way expedited."

WAS THIS A DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW?

This lawsuit presented new issues to the Court a demand the Right to Vote and hold office in an organization holding a Tax Exempt Status from United States Government and the State of New York. United States Supreme Court held in Coit vs Green 404 U. S. 997 (1971), Grant of Tax Exemption is "State Action".
United States Supreme Court held in Connor vs. Johnson 420 U. S. 690 (1971)

" A DECREE OF A DISTRICT COURT IS NOT WITHIN THE REACH OF # 5 OF THE VOTING RIGHTS ACT OF 1965.

Therefore Judge Curtins action must be considered by this court as "USURPATION OF POWER" and "DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW."

5. That the Court will be asked to review the important question since Grant of Tax Exemption by the State and Federal Government is Governmental Action, Foundations holding a Tax Exempt Status is arm of State and Federal Government, that foundations do not have

the right to use charitable funds to hire their private lawyers to fight in the Courts to maintain Racial Discrimination and to violate State and Federal Laws. Their action violates 28 U. S. C. 515, 28 U. S. C. 516, 28 U. S. C. 517, and 28 U. S. C. 519.

6. That United States Supreme Court, will be asked to review the entire lawsuit, The Motion for Summary Judgment and the Brief submitted to United States Court of Appeals For Second Circuit, and to grant the Summary Judgment

CONSTITUTIONAL PROVISIONS, STATUES, AND RULES INVOLVED

Amendment V. XIV, XV of United States Constitution. Statutes, 42 U. S. C. 1971, 42 U. S. C. 1981, 42 U. S. C. 1973, 1965 Voting Rights Act, 1969 Tax Reform Act 42 U. S. C. 1983

STATEMENT OF THE CASE

That the 12 Defendant Tax Exempt Organizations under Federal and State Tax Exemption laws. Discriminate against Petitioner because he is Black and being poor. That these foundation

only allow rich White people as Trustees or Directors or White people holding high professional positions. In most cases these foundations that are practicing Racial Discrimination, has a lawyer as their Attorney, and also as an officer and Director of the foundation. The Lawyer is an officer of the Court under New York State Laws only lawyers can hold a position in the State Judicial Branch of Government. All of the defendant foundations with the exception of two has a lawyer on their Board of Directors. These Defendants, do not allow Plaintiff to vote or hold office. Most of the foundation officers are members of the family, which are illegal Directors or Trustees under section 3078.03 (5) c (a) or (b) (Family) of the Internal Revenue Code or the foundations are corporate control which violates the I. R. C. That these foundations do not give grants to Blacks on equal basis, do not invest any of their Assets in Black businesses. They all practice Racial Discrimination against Petitioner

REASONS WHY CERTIORARI SHOULD BE GRANTED

1. That this Court cannot allow a District Judge, to use the authority Government as a badge or a shield to allow his fellow associates to violate Petitioners Civil Rights, and then to Order a Stay of Proceedings to keep his decision from being reviewed by another Court. In the Western States many years ago dishonest judges were used exclusively by the upper class of people to dominate and take unfair advantage of the less fortunate and the poor people. The results of the judges dishonesty spread to other Central States and the law was taken into organizations hands (vigilantes) to mete out justice as they decided. this resulted in massacre and many lynchings. These conditions would never had come about if they had honest judges. Today distrust of judges honestly exist and the distrust is growing. Judges takes the oath of office to uphold the Constitution of United States, that Oath goes out of the window so to speak, the first time a Black face comes before the bench of Justice.

2. If the United States Supreme Court failed to review this Stay of proceedings, in a Civil Right Action. This would be allowing a whole new procedure to avoid obeying Civil Rights Laws. The Civil Rights Laws and Constitutional Provisions and Opinions of United States Supreme Court have been in agreement. The action of Judge Curtin is out of step with Civil Rights progress.

3. That this is a Denial of Due Process and Denial of Equal Protection of the Laws. A Review must be made.

CONCLUSION

Upon all that is herein set forth, along with Complaint, Motion for Summary Judgment and Appeal Brief filed in United States Court of Appeals for Second Circuit, which are part of the Record certified by the United States Court of Appeals, the petitioner earnestly prays the Court for a Writ of Certiorari, directed to the United States Court of Appeals for the Second Circuit that this Court may Review the decision which that Court has failed to do.

That allowed the District Court to hold Petitioners lawsuits on a rubber string.

Respectfully submitted,

REV. DONALD L. JACKSON
Petitioner

OPINION OF THE COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-2093

REV. DONALD L. JACKSON

Plaintiff-Appellant.

v.

THE STATLER FOUNDATION, et al

Defendants-Appellees.

Appeal From the United States District Court for the Western District of New York, John Curtin Chief District Judge.

Argued and Decided October 18, 1974

Before Hon. Leonard P. Moore, Hon. James L. Oakes and Hon. William H. Timbers Circuit Judges

---

IT IS HEREBY ORDERED THAT THE MOTION MADE HEREIN BY COUNSEL FOR THE DEFENDANTS DATED SEPTEMBER18, 1974 TO

dismiss the appeal from the United States District Court for the Western District of New York for lack of jurisdiction with costs that the motion to dismiss be and it hereby is granted

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UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON

Plaintiff

-vs- Civil-1974-185

THE STATLER FOUNDATION, et al.,

Defendants

These actions, both presently pending, have almost similar allegations, parties and seek essentially the same relief. In both plaintiff alleges racial discrimination by the foundation defendants in that they refused to hire him as a director, refused to give scholarships to his children and refused money to his foundation grants. He also alleges a pattern of discriminatory employment and investment by the foundation.

On motion of the defendants in Civil 1971-592, the court filed an order on March 7, 1973 dismissing the complaint. On December 4, 1973, the United States Court of Appeals for the Second Circuit reversed and remanded for further proceedings, In its decision, the appeals court suggested

that the plaintiff be given leave to amend his complaint, join additional parties and allege additional facts if he desired. The court also provided that "the district court should consider requesting that counsel represent appellant," After remand, the plaintiff obtained counsel and, on March 29, 1974, the court granted an order permitting the filing of an amended complaint and the adding of new defendants.

On the same day the plaintiff, proceeding pro se, filed a lawsuit in the United States District Court for the District of Columbia(now entitled Civil 74-185 in this district). On April 4, 1974, District Court Judge William B. J nes ordered that the action be transferred to the United States District Court for the Western District of New York.

Therefore, at this time both lawsuits are pending in this district.

Although the workding of the complaints is not exactly the same and plaintiff has added additional parties in the District of Columbia suit, nevertheless, the relief sought is essentially the same. Plaintiff alleges in his complaint in Civil 74-185:

> This lawsuit was filed in the Western District of U. S. Court For New York State, on Dec. 27 1971, Docket No. Civil 1971-592...

Defendants move for an order dismissing Civil action 1974-185, arguing that the existence of identical actions pending in the same district will result in confusion and impose upon the court and counsel unnecessary and overlapping burdens. It appears to the court that there is no just or practical reason why the two lawsuits should proceed at the same time. In discretion, the motion of defense to dismiss Civil 74-185 is denied at the present time. However, any further proceedings in Civil 74-185 are stayed until further order of the court, and defendants' time to answer or to move is extended until further order. Plaintiff may amend his complaint, add additional parties and allege additional facts in Civil 1971-592 as provided for in the order of

March 29, 1974. Plaintiff's motion for Summary judgment is Civil 74-185 is denied. If plaintiff desires an extension of time to file his amended complaint in civil 71-592, application may be made to the court upon notice to the defendants.

So ordered.

/s/ JOHN T. CURTIN
United States District
Judge

DATED; May 6, 1974.

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON

Plainitff

-against- Civil No. 74-185

THE STATLER FOUNDATION, etal

MOTION

Defendants

SIRS:

PLEASE TAKE NOTICE, that plaintiff, will move the Court on 5th Day of August 1974, at 10:00 a. m. in the forenoon, or as soon thereafter as counsel can be heard for this Court to Appoint a Three-Judge-Court, pursuant to 28 U.S.C. Section 2281 and 2282 and the Voting Rights Act. At U. S. Courthouse.
That United States Supreme Court held in the case:

Connor v. Johnson 402 U. S. 690, 691
"A decree of the United States District Court is not within reach of Section 5 of the Voting Right Act."

Therefore any and all decision in this case must be reviewed by three-judge-court, and for such other and further relief as to this Court may seem just and proper, and for the Court to Reverse itself in its dismissal of Plaintiffs Motion for Summary Judgment, and to grant the full Summary Judgment.

6-f

Dated: July 30, 1974
Buffalo, New York

/s/ REV. DONALD L. JACKSON

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON
Plaintiff

-vs- Civil No 1974-185

THE STATLER FOUNDATION, et al
Defendants

Proceedings held before the Hon. John T. Curtin, United States District Judge, in Part I, United States Court House, on August 5, 1974.

Appearance: Rev. Donald L. Jackson
Plaintiff herein appearing pro se.

JOHN T. ELFVIN, United States Attorney, by Theodore Burns, Assistant United States Attorney, appearing for the Defendant United States of America.

JAECKLE, FLEISCHMANN & MUGEL, Attorneys for the Defendant Julyia R and Estelle L. Foundation, Peter J. Brevoka, Esq of Counsel

THE COURT: Mr. Burns, do you have the order at hand in the other file?

MR. BURNS: No, your Honor, but there was an order of this Court I think dated May 6th in which all further action pending in the case now before the Court was to be deferred until other issues -- -

MR. JACKSON: What case are you appear- for now, Sir?

MR. BURNS: And, your Honor, I might point out - - -

THE COURT: Wait a minute, This is Mr. Burns. He is an Assistant United States Attorney. Your motion in 1974-293 against the United States of America ---

MR. JACKSON: That's the one.

THE COURT: Mr. Burns appears today.

MR. BURNS: No. we do not appear.

THE COURT: You do not appear.

MR. BURNS: We do not appear. We are not a party in this particular case, 74-293.

THE COURT: Oh.

MR. BURNS: Although we did receive a copy of this motion, as I say, we are not a party in this particular action.

THE COURT: Mr. Jackson, didn't I stay all proceedings in this case 74-293 until the issues in the other case were resolved?

MR. JACKSON: No your Honor. This is the

first time this case has been in this court. The only reason this is here for today is to ask for the appointment of a three-panel-judge to hear this case.

THE COURT: All right.

MR. JACKSON: Title 5 of the 1969 Civil Rights Act says that a three panel judge upon request will be - - -

THE COURT: Mr. Jackson, I have your motion, You have the prior order of the Court here.

MR. JACKSON: Not on this case, your Honor.

THE COURT: All right. I have your papers and I will consider it.

MR. JACKSON: All right. you have another case, the one you just had reference to, 185.

THE COURT: There is nothing on 185 before me today.

MR. JACKSON: Oh, yes. I filed a motion on both cases.

THE COURT: You have an attorney on 185.

MR. JACKSON No, I do not. I represent 185 myself.

THE COURT: David Yellen.

MR. JACKSON: He represents 592.

THE COURT: Well, the only case we have on the calendar this morning is 74-293.

MR. JACKSON: I filed both papers at the same time.

THE COURT: What is that 185 about?

MR. JACKSON: That's the one he had reference to that you are continually referring to. 185 is against the 13 tax exempt foundations, the United States Attorney, the Internal Revenue Service and a couple of others.

THE COURT: Doesn't Mr. Yellen represent you in that case?

MR. JACKSON: He represents 592. These are two separate cases. Now you keep saying there is one.

THE COURT: Three.

MR. JACKSON There is two cases referring to tax exempt organizations, This court doesn't have jursidiction over either one of those cases. Only a three panel judge can rule on those two cases. Then the third case is 293. That's the one against the United States and the State of New York and nothing but a three judge court can rule on that or the Court of Appeals and this morning I am asking a three panel judge be

appointed on both cases. There is 133 days expired and there is only 20 days supposed to expire.

THE COURT: We have another attorney. Your name, please?

MR. BERVORKA: Peter Bervorka, from Jaeckle, Fleischmann, representing the Julia R. and Estelle L. Foundation, We are one of the 13 defendants, foundations that he sued in 74-185. That was the suit brought in the District of Columbia that was transferred up here.

THE COURT: Oh, I see, 185, That's how we get the number 185. Was that the number in the District of Columbia?

MR. BERVORKA: No I think it was 74-499, something like that.

MR. JACKSON: Yes 74-499 was District Columbia. This number here is 74-185, but a three panel judge in this case is not an arguable matter because ---

THE COURT: This is an entirely new lawsuit.

Mr. Jackson: No.

THE COURT: 74-439, wasn't that the one in the District of Columbia?

MR.. JACKSON: 74-499 is 293.

MR. BERVORKA: After the Second Circuit reversed and remanded Mr. Jackson filed suit down in the District of Columbia pro se and it was transferred here. It was transferred up here by the District of Columbia.

MR. JACKSON: You are referring to the wrong case, I think.

THE COURT: Okay. We also have 75-185. You are appearing in 74-185.

MR. BERVORKA: Yes Judge.

THE COURT: 74-185, that was the suit against the foundations which you filed in the District of Columbia.

MR. JACKSON; Yes, your Honor.

THE COURT: Further proceedings, Mr. Bervorka, am I correct, am I not, in saying that further proceedings in this case were stayed?

MR. BERVORKA: Yes, your Honor.

THE COURT: I would adhere to the order in that case. That is stayed. Now in 74-293, this is an action you bring pro se against

MR. JACKSON; Your Honor, on this one you say the order stays, that section come under 5 of the 1965 Voting Rights Act and the law states that the District Court does not have

jurisdiction to make any kind of decision other than to appoint a three-panel-court. That was carried to the United States Supreme Court and was upheld in the case I quoted to you in the case of Carter vs Johnson.

THE COURT: Wait a minute. You are talking about 74-293, Donald Jackson against United States - - -

MR. JACKSON: No, Sir. I am talking about 185, your Honor. That's a section 5 matter.

THE COURT: All right. If you don't agree with my order in that case staying proceedings you may appeal it, Mr. Jackson

MR. JACKSON: I shall do so tomorrow.

MR. BURNS: Might I note in that case we are not a party.

THE COURT: You are not a party.

MR. BURNS: in 74-185.

THE COURT: All right. In Donald Jackson against United States , 74-293 you now move for the appointment of a three judge court in that case.

MR. JACKSON: Yes sir.

MR. BURNS: And, your Honor, again the United States is not a party in that case.

THE COURT: You are named.

MR. BURNS: We might be named but we have not been served.

THE COURT: You are named but you have not been served. All right.

MR. JACKSON: You were served the papers in that case. We have the return on that.

THE COURT: You can look at the file and determine whether service is made. No appearance by the United States or by the State of New York. We will return at 11 for the calling of the civil calendar.

MR. JACKSON: What is your decision on that now?

THE COURT: I am not making any decision, Mr. Jackson. You may determine whether or not the service was properly made.

I HEREBY CERTIFY THAT THIS RECORD IS TRUE AND ACCURATE TRANSCRIBE FROM STENOGRAPHIC NOTES IN THIS PROCEEDINGS

/s/ H. T. NOEL
Official Reporter
U. S. District Court

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON

Plaintiff

-vs-

Civil 1971-592

THE STATLER FOUNDATION, et al.

Defendants

On March 11, 1974 the court considered the plaintiff's motion to amend his complaint to add additional parties as defendants. No serious objection was interposed to the request of plaintiff to amend his complaint. The court orders that the plaintiff may amend his complaint in the form proposed. Pursuant to Section 21 of the Federal Rules of Civil Procedure, the plaintiff may add the additional defendants set forth in his motion. Serive of the SUMMONS AND COMPLAINT SHALL BE MADE UPON THE ADDITIONAL NAMED DEFENDANTS NOT LATER THAN APRIL 15, 1974. A copy of this order shall be served upon all additional defendants, along with the summons and complaint.

The time for all defendants to respond to the amended complaint by answer or motion is extended until July 29, 1974. Any Motion shall be made returnable on that day. The defense right to interpose any motion under the rules is deferred until that time

So ordered.

/s/ JOHN T. CURTIN

March 29, 1974. U. S. District Judge

15-n

As it was pointed out on Page 8 of Petition for Writ of Certiorari a secret Order from Judge Curtin's office to U. S. Marshall's not to serve the papers until after the April 15th date, which was done to give the defendants a defense against Petitioners papers.

Also I forgot to point out that one of the Law Clerk's in Judge Curtins office was also a member of one of the defendants Law firms. Petitioner did not have such infulence.

SUPREME COURT, U. S.
FILED
DEC 30 1974
MICHAEL RODAK, JR., CLERK

(145-E)

IN THE

Supreme Court of the United States

No. 74-677

REV. DONALD L. JACKSON,

Petitioner,

against

THE STATLER FOUNDATION, *et al.*,

Respondents.

BRIEF IN OPPOSITION TO GRANTING CERTIORARI

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IN THE

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REV. DONALD L. JACKSON,

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Decision Below

On October 22, 1974, the United States Court of Appeals for the Second Circuit dismissed plaintiff-petitioner's appeal from the United States District Court for the Western District of New York for lack of jurisdiction.

Question Presented

Should the dismissal of an appeal by the Court of Appeals for lack of jurisdiction be reviewed where the petitioner appealed from a determination by the District Court to adhere to a prior order staying all further proceedings?

Statute Involved

28 U.S.C. § 1291:

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

28 U.S.C. § 1292:

"(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court:

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property:

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed:

(4) Judgments in civil actions for patent infringement which are final except for accounting.

"(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall

so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however*, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge hereof shall so order."

Statement of the Case

This action was commenced by the plaintiff-petitioner, Rev. Donald L. Jackson, *pro se*, in the United States District Court for the District of Columbia on or about March 28, 1974, against Mario Procaccino,[1] Louis J. Lefkowitz[2] and several foundations and United States government officials.

On April 2, 1974, the District Court for the District of Columbia, *sua sponte*, transferred this case to the United States District Court for the Western District of New York.

On behalf of defendants Procaccino and Lefkowitz a motion was made for an enlargement of time in which to answer or otherwise move.[3]

Some of the other defendants moved in the District Court for the Western District of New York for dismissal of the action and the plaintiff-petitioner moved for summary judgment.

The United States District Court for the Western District of New York issued an order on May 6, 1974 which reads in part:

---

[1] Commissioner of Taxation and Finance, State of New York

[2] Attorney General, State of New York.

[3] The grounds for this motion were that the plaintiff had brought at least four other actions in which he demanded the same or similar relief.

"These actions,[4] both presently pending, have almost similar allegations, parties and seek essentially the same relief. In both plaintiff alleges racial discrimination by the foundation defendants in that they refused to hire him as a director, refused to give scholarships to his children and refused money to his foundation grants. He also alleges a pattern of discriminatory employment and investment by the foundation.

* * *

"It appears to the court that there is no just or practical reason why the two lawsuits should proceed at the same time. In discretion, the motion of defense to dismiss Civil 74-185 is denied at the present time. However, any further proceedings are stayed until further order of the court, and defendants' time to answer or to move is extended until further order. Plaintiff may amend his complaint, add additional parties and allege additional facts in Civil 1971-592 as provided for in the order of March 29, 1974. Plaintiff's motion for summary judgment in Civil 74-185 denied. If plaintiff desires an extension of time to file his amended complaint in Civil 71-592, application may be made to the Court upon notice to the defendants."

Despite this order the plaintiff-petitioner noticed a motion returnable August 5, 1974 requesting the Court to

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[4] Civil Action No. 71-592 was commenced in 1971 by the plaintiff-petitioner against the defendant foundations. The action was dismissed by the District Court. Plaintiff-petitioner appealed to the United States Court of Appeals for the Second Circuit which affirmed in part, reversed in part and remanded the case to the District Court for further proceedings. On March 29, 1974, the District Court granted plaintiff-petitioner's motion for leave to amend and to add parties. Thereafter, the plaintiff-petitioner filed an amended complaint and added the following defendants: Judge William J. Regan, Hon. Mario A. Procaccino, Hon. Louis J. Lefkowitz, Hon. H. B. Mosher, Hon. George P. Shultz and Hon. Donald L. Alexander. Motions were filed by most defendants for dismissal and or summary judgment. These motions are now under consideration by the District Court.

appoint a three-judge panel to hear his case and to reverse itself on dismissal of the motion for summary judgment and grant summary judgment in his favor.

On the return date the Court advised plaintiff-petitioner that the action had been stayed and the Court was adhering to its prior order staying the action. No written order was issued by the Court.

Thereafter, the plaintiff-petitioner filed a notice of appeal to the United States Court of Appeals for the Second Circuit. His appeal was dismissed by that Court for lack of jurisdiction on October 22, 1974.

ARGUMENT

The determination by the District Court to adhere to a prior order staying all further proceedings and refusing to hear petitioner's motion is not a final or appealable order. Dismissal by the Court of Appeals, Second Circuit for lack of jurisdiction was proper and does not warrant review by this Court.

The Court of Appeals has jurisdiction to review only final orders and interlocutory orders granting or denying injunctive relief (28 U.S.C. §§ 1291, 1292).

The stay granted by the District Court[5] is neither a final order nor an interlocutory order granting or denying injunctive relief. In *International Nickel Co.* v. *Martin J. Barry, Inc.*, 204 F. 2d 583 (4th Cir., 1953), the District Court granted a stay of an action pending the outcome of a prior action instituted by the same plaintiff in the United States District Court for the Southern District of New York. At

[5] By order dated May 6, 1974

issue in both actions was the validity of a patent. In dismissing for lack of jurisdiction the appeal from the granting of the stay, the Fourth Circuit, United States Court of Appeals stated:

> "[1] We think it clear that the order staying proceeding in the case is neither a final order nor an order granting or denying an interlocutory injunction. It is merely an interlocutory order stating what the court purposes [sic] to do, which may be revoked or superseded at any time. As such, it is clearly not appealable. See City of Morgantown v. Royal Ins. Co., 337 U.S. 254, 69 S.Ct. 1067, 93 L.Ed. 1347; Schoenamsgruber v. Hamburg American Line, 294 U.S. 454, 55 S.Ct. 475, 79 L.Ed. 989; International Refugee Organization v. Republic S. S. Corp., 4 Cir., 189 F.2d 858, 861; Clinton Foods v. United States, 4 Cir., 188 F.2d 289; Jiffy Lubricator Co. v. Stewart-Warner Corp., 4 Cir., 177 F.2d 360; Triangle Conduit & Cable Co., Inc., v. National Electric Products Corp., 6 Cir., 127 F.2d 524; Beckhardt v. National Power & Light Co., 2 Cir., 164 F.2d 199; Phillips v. Securities & Exchange Comm., 2 Cir., 171 F.2d 189; Mottolese v. Preston, 2 Cir., 172 F.2d 308, 309."

Likewise, the determination by the District Court to adhere to the stay is not appealable because it is neither a final order nor an interlocutory order granting or denying injunctive relief.

As was recognized by the Court in *International Nickel Company, Inc.* v. *Martin J. Parry, Inc., supra*, 586, considerable discretion must be afforded to the District Court Judge to dispose of cases on his calendar with the least time and effort for the Court, litigants and counsel. The petitioner filed an action in December, 1971 and on March 29, 1974 was given leave to amend his complaint and to add additional defendants.

Petitioner then filed the action in the instant case involving the same issues and parties as the prior case.[6]

[6] The demand in the amended complaint in Civil Action No. 592 reads:

"WHEREFORE, the plaintiff respectfully requests the Court to award the following relief:

a. Ordering the convening of a three-judge court as required by Sections 2281 and 2282 of 28 USCS because the plaintiff and his class demand an order enjoining the grant of tax exempt status to the defendant foundations and charities.

b. Awarding to the plaintiff, Donald L. Jackson, pursuant to the provisions of 42 USCS 1983, money damages in the amount of One Hundred Fifty Thousand ($150,000.00) Dollars for loss of employment due to the acts prohibited by 42 USCS 1983 and

c. An award of money damages to the plaintiff pursuant to 42 USCS 1983 in the amount of $6,250,000.00 for loss of business due to the deprivation of his rights to obtain funds from the defendant foundations and charities for investment purposes, and

d. The sum of $10,000.00 for each member of the class as money damages against the defendant foundations and charities for violation of 42 USCS 1981, 1983 and 1985, and

e. Awarding attorney's fees pursuant to 42 USCS 2000E-5(k) in the amount of Twenty-Five Thousand ($25,000.00) Dollars against the defendant foundations or charities, and

f. A declaratory judgment declaring as a matter of law that the defendants herein have violated the Constitutional rights of the plaintiff and the class he represents, and

g. For such other and further relief as the Court may deem proper."

The demand in the complaint in Civil Action No. 73-485 reads:

"WHEREFORE, the plaintiff respectfully requests the Court to award the following relief:

a. Ordering the convening of a three-judge court as required by Sections 2281, 2282 and 2284 of 28 USCS because plaintiff demands an order enjoining defendants from depriving plaintiff the right to vote and hold office and to enjoining the grant of tax exempt status to the defendant foundations and charities.

b. Awarding to the plaintiff, Rev. Donald L. Jackson, pursuant to the provisions of 42 USCS 1983, money damages in the amount of One hundred fifty thousand ($150,000.00) Dollars for depriving plaintiff the right to vote and hold office acts prohibited by XV Amendment to United States Constitution.

(Footnote continued on following page)

It would seem illogical for both actions to continue at the same time. There was no abuse of discretion by the District Court in staying the second action pending the outcome of the first action.

Since the plaintiff-petitioner appealed from a non-appealable order, dismissal of his appeal by the Court of Appeals Second Circuit was proper and does not warrant review by this Court.

(Footnote continued from preceding page)

c. Awarding to plaintiff, Rev. Donald L. Jackson, pursuant to the provisions of 42 USCS 1983, money damages in the amount of $600,000.00 Six Hundred Thousand Dollars, from the Statler Foundation, and One Hundred Fifty Thousand ($150,000.00) for loss of employment due to the acts prohibited by 42 USCS 1983 from each of the other 12 defendant foundations or charities and

d. An award of money damages to the plaintiff pursuant to 42 USCS 1983 in the amount of $6,500,000.00 for loss of business due to the deprivation of his rights to obtain funds from the defendant foundations and charities for investment purposes, and

e. A declaratory judgment declaring as a matter of law that the defendants herein have violated the Constitutional rights of the plaintiff and

f. For such other and further relief as the Court may deem proper."

CONCLUSION

Petitioner's application for certiorari should be denied.

Dated: December 19, 1974.

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SUPREME COURT, U. S

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-677

REV. DONALD L. JACKSON,
Petitioner,

v.

THE STATLER FOUNDATION, *et al.*,
Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

BRIEF AND APPENDIX ON BEHALF OF RESPONDENTS, THE BUFFALO FOUNDATION, JAMES H. CUMMINGS FOUNDATION, INC. AND THE WURLITZER FOUNDATION, IN OPPOSITION

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IN THE

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ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

BRIEF ON BEHALF OF RESPONDENTS, THE BUFFALO FOUNDATION, JAMES H. CUMMINGS FOUNDATION, INC. AND THE WURLITZER FOUNDATION, IN OPPOSITION

Orders of the Court Below

On October 22, 1974 (not September 18, 1974 as stated at p. 2 of the Petition), the United States Court of Appeals for the Second Circuit issued counterpart orders dismissing without opinion petitioner's appeal from an interlocutory order of the United States District Court for the Western District of New York reaffirming that Court's earlier order temporarily staying further proceedings in the action because a duplicate action is pending in the same

Court. Insofar as here relevant, the Court of Appeals' counterpart orders are identical. (A copy of one such order is reproduced in Respondents' Appendix, pp. A-1—A-2)

Jurisdiction

These respondents do not question the jurisdiction of the United States Supreme Court in the premises. However, 28 USC § 2350, invoked by petitioner, is inapplicable.

Statutes Involved

28 USC § 1291:

> "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, . . .except where a direct review may be had in the Supreme Court."

28 USC § 1292(a)(1):

> "The courts of appeals shall have jurisdiction of appeals from . . .[i]nterlocutory orders of the district courts of the United States . . .granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court:"

Questions Presented

(1) Does the Court of Appeals have jurisdiction of an appeal from an interlocutory order wherein the District Court deferred plaintiff's motion for a summary judgment and for the appointment of a three-judge court by adhering to its earlier order temporarily staying further proceedings in the action, pending further order, in view of a duplicate action for virtually the same relief previously commenced by the same plaintiff against the same defendants then pending in the same Court?

(2) Did the District Court abuse its discretion by adhering to its previous order staying further proceedings on plaintiff's motion for a summary judgment and for the appointment of a three-judge court where another action previously commenced by the same plaintiff against the same defendants and seeking to vindicate the same alleged rights on the basis of virtually identical allegations was then pending in the same Court?

Statement of the Case

On December 30, 1971, petitioner, *pro se*, commenced Civil Action No. 71-592 in the United States District Court for the Western District of New York against fourteen charitable foundations located in the Western New York area. The complaint, allegedly based on 42 USC §§ 1981, 1983 and 1985, broadly alleged racial discrimination on the part of the defendant foundations in their hiring and portfolio investment practices; racial discrimination against petitioner's private foundation in their grant allocation practices; and discrimination on account of race against the petitioner and his children in regard to petitioner's alleged applications to become a director of the various foundations and to obtain scholarship grants for his children. The complaint demanded injunctive and declaratory relief, money damages, the revocation of the defendant foundations' tax exemptions and judgment directing the foundations to surrender all their assets to the United States Treasury in lieu of taxes.

Depositions were taken and various defendants moved against the complaint under Rules 12 and/or 56 of the Federal Rules of Civil Procedure. On March 7, 1973, the United States District Court for the Western District of New York, Hon. John T. Curtin, dismissed the complaint.

Upon petitioner's appeal to the United States Court of Appeals for the Second Circuit, that Court, in an opinion filed December 4, 1973 (not officially reported) and revised April 5, 1974 (496 F. 2d 623), affirmed in part, reversed in part, and remanded the matter to the District Court.

Upon remand, petitioner, on March 11, 1974 (through an attorney, since withdrawn), moved the District Court for leave to file an amended complaint in Civil Action No. 71-592, attaching a copy of the proposed amended complaint to his motion papers. There was no opposition and the District Court granted the motion on March 29, 1974. (Petitioner's Appendix, p. 15-a)

Insofar as here relevant, the amended complaint in Civil Action No. 71-592 (Respondents' Appendix pp. A-3—A-17) differs from the original complaint in the following respects only: (1) it adds various governmental officials as defendants; (2) it purports to state a claim under the Voting Rights Act of 1965, 42 USC 1972 *et seq.*; (3) it requests the convening of a three-judge court; (4) it omits allegations of racial discrimination based upon alleged refusals to grant scholarships to plaintiff's children; and (5) it omits the request for an order that defendant foundations' assets be paid into the United States Treasury.

On March 28, 1974, petitioner, *pro se*, commenced this duplicate action in the District Court for the District of Columbia. Conceding forum shopping, the complaint in the District of Columbia action alleges in part:

> "This Lawsuit Was Filed In The Western District Of U.S. Court For New York State, . . . docket No. CIV 1971-592. . . . The amended complaint, filed in the Western District Court of New York State, will be withdrawn as soon as the District Court of the District of Columbia, assumes jurisdiction of this case." (Respondents' Appendix pp. A 31, A-32)

Each defendant in the District of Columbia action is a defendant in the pending 1971 Western District of New York action. The complaints in both actions seek to vindicate the same alleged rights—including those claimed to arise under the Voting Rights Act of 1965—on the basis of virtually identical allegations.

Stating that, "[f]rom a reading of the complaint in this action, this Court concludes that there is no showing of a cause of action under [the Voting Rights Act of 1965] 42 USC 1973," and that "plaintiff's complaint alleges that this lawsuit was previously filed in the United States District Court for the Western District of New York and is presently pending therein," the District Court for the District of Columbia, Hon. William B. Jones, on April 2, 1974, *sua sponte*, transferred the District of Columbia action to the Western District of New York, where it was assigned Civil Action No. 74-185. (Respondents' Appendix pp. A-34—A-35)

Thereupon, several defendants moved for dismissal of the transferred action on the ground that it duplicates the pending 1971 action. Petitioner, prior to expiration of defendants' time to answer therein, moved for a summary judgment in the transferred action.

On May 6, 1974, the District Court for the Western District of New York denied petitioner's motion for a summary judgment and "in discretion" denied defendants' motion to dismiss the transferred action. Instead, based upon its conclusion that the two pending actions "have almost similar allegations, parties and seek essentially the same relief", the Court ordered that "any further proceedings in Civil 74-185 [the transferred District of Columbia action] are stayed until further order of the Court, and defendants' time to answer or to move is extended until further order."

(Petitioner's Appendix, p. 5-e) The order further provided:

> "Plaintiff may amend his complaint, add additional parties and allege additional facts in Civil 1971-592 as provided for in the order of March 29, 1974. . . . If plaintiff desires an extension of time to file his amended complaint in Civil 71-592, application may be made to the Court upon notice to the defendants." (Petitioner's Appendix, p. 5-e)

Disdaining to proceed in the original action, where he has yet to answer properly interrogatories filed April 18, 1974, petitioner, on August 5, 1974, in contravention of the then three-month-old stay in this transferred action, renewed his motion for a summary judgment and moved for the appointment of a three-judge court.

The District Court denied, from the bench, petitioner's collateral attack upon its order of May 6, 1974 and adhered to the stay therein. (Petitioner's Appendix, p. 12-k) On August 6, 1974, petitioner noticed an appeal from this order. The Court of Appeals for the Second Circuit, on October 22, 1974, granted, from the bench, defendants' motions to dismiss the appeal as from a non-appealable interlocutory order. The petition for a writ of certiorari seeks review of this order.

Argument

In transferring, *sua sponte*, this 1974 duplicate District of Columbia action to the United States District Court for the Western District of New York, the District Court for the District of Columbia, Hon. William B. Jones, stated:

> "From a reading of the complaint in this action, this Court concludes that there is no showing of a cause of action under [the Voting Rights Act of 1965] 42 USC 1973.

> Furthermore, plaintiff's complaint alleges that this lawsuit was previously filed in the United States District Court for the Western District of New York and is presently pending therein."

Each defendant in this 1974 action is a defendant in the 1971 action. The complaints in both actions seek to vindicate the same alleged rights—including those claimed to arise under the Voting Rights Act of 1965—on the basis of virtually identical allegations. Under these circumstances, the District Court's stay of further proceedings in this transferred action, pending further order, in view of the 1971 action wherein there had been extensive discovery, numerous motions, and one appeal, far from an abuse of discretion, constitutes a sound exercise of the discretion "inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." [*Landis v. North American Company*, 299 U.S. 248, 254 (1936)] Obviously, the District Court did not want two actions pending in the same Court between the same parties, for the same relief, with additional pleadings, discovery, and motions, unnecessarily requiring the time of the Court and of multiple attorneys.

Contrary to his claims of being suspended on a "rubber string" preventing his proceeding in either action, petitioner is, and at all times has been, free to proceed with his 1971 action.

Moreover, the Court of Appeals had no jurisdiction of petitioner's abortive appeal from the District Court's order of August 5, 1974. The order does not deny petitioner's motion for a summary judgment* or for the convening of a

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* See *Switzerland Cheese Association, Inc. v. E. Horne's Market, Inc.*, 385 U.S. 23 (1966).

three-judge court.* It simply adheres to the then three-month-old order staying proceedings in the 1974 action while the 1971 action is pending.

In *Enelow v. New York Life Insurance Company*, 293 U.S. 379 (1935), this Court made it clear that a stay such as that ordered and reaffirmed by the District Court herein is not an "injunction" within the contemplation of 28 USC § 1292 (a) (1) but rather "a mere stay of proceedings which a court . . . may grant in a cause pending before it by virtue of its inherent power to control the progress of the cause so as to maintain the orderly processes of justice." (293 U.S. at 381-382) [See also *Baltimore Contractors, Inc. v. Bodinger*, 348 U.S. 176, 183 (1955); *Serrano v. Plaza Associates, Inc.*, 390 F. 2d 593 (1st Cir., 1968); *United States v. Chelsea Towers, Inc.*, 404 F. 2d 329 (3rd Cir., 1968); 9 *Moore's Federal Practice* ¶ 110.20 [4.-2] at 250. *Cf. International Nickel Company v. Martin J. Barry, Inc.*, 204 F. 2d 583 (4th Cir., 1953); *Motolese v. Preston*, 172 F. 2d 308 (2d Cir., 1949).]

Even if petitioner's appearance *pro se* in this Court excuses his failure to comply with paragraphs 4, 1(c), 1(d), and 1(h) of this Court's Rule 23, the petition for certiorari should be denied. There exists no error below and there are no "special and important reasons" for granting the petition. (Rule 19)

The petition involves nothing other than petitioner's pique at being thwarted in forum shopping. His sole purpose in instituting the District of Columbia action is stated frankly and repeatedly in the complaint therein (Respondents' Appendix pp. A-31—A-32) as well as in the petition

* *See Gonzalez v. Automatic Employees Credit Union, et al.*, 43 U.S.L.W. 4025 at 4028 n. 19 (U.S. Dec. 10, 1974); *Cancel v. Wagman*, 441 F. 2d 553 (2d Cir., 1971).

for certiorari (pp. 5, 6, 7, 8, 9, 14, and 15), namely, to broadcast his false and irresponsible accusations directed against the Chief United States District Judge for the Western District of New York.

Far from constituting a departure "from the accepted and usual course of judicial proceedings" (Rule 19(1)(b)), the stay inveighed against represents a sound exercise of judicial discretion in controlling "the progress of the cause so as to maintain the orderly processes of justice." [*Enelow v. New York Life Insurance Company, supra*, at 382.]

Conclusion

There are no "special and important reasons" for granting a writ of certiorari here. The petition should be denied.

Respectfully submitted,

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The Cameron Baird Foundation and
The Ferguson Foundation, Inc., by

Hodgson, Russ, Andrews, Woods & Goodyear, John E. Dickinson, *of counsel*,
1800 One M & T Plaza,
Buffalo, New York 14203.

Harry Dent Family Foundation, Inc., by

Brown, Kelly, Turner, Hassett & Leach, Ogden R. Brown, *of counsel*,
700 Niagara Frontier Building,
Buffalo, New York 14202.

William J. Connors Foundation, by

Falk, Siemer, Glick, Tuppen & Maloney, Charles D. Tuppen, Jr., *of counsel*,
2200 Erie County Savings Bank Bldg.,
Buffalo, New York 14202.

Josephine Goodyear Foundation, by

Williams, Stevens, McCarville & Frizzell, P.C., E. W. Dann Stevens, *of counsel*,
1920 Liberty Bank Building,
Buffalo, New York 14202.

Julia R. and Estelle L. Foundation, Inc., by

Jaeckle, Fleischmann & Mugel, Albert R. Mugel, *of counsel*,
700 Liberty Bank Building,
Buffalo, New York 14202.

Margaret L. Wendt Foundation, by

Hellings, Morey, Kresse & Rickers, Robert J. Kresse, *of counsel*,
840 Marine Trust Building,
Buffalo, New York 14203.

Order Dismissing Appeal

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-second day of October, one thousand nine hundred and seventy-four.

REV. DONALD L. JACKSON,
Plaintiff-Appellant,

v.

THE STATLER FOUNDATION, CAMERION BAIRD FOUNDATION, THE BAIRD FOUNDATION, WILLIAM J. CONNERS FOUNDATION, JAMES H. CUMMINGS FOUNDATION, HARRY DENT FAMILY FOUNDATION, FERGUSON FOUNDATION, INC., JOSEPHINE GOODYEAR FOUNDATION, JULIA R. and ESTELLE L. FOUNDATION, INC., THE MARGARET L. WENDT FOUNDATION, THE FARNY R. and GRACE K. WURLITZER INC., FRED L. EMERSON FOUNDATION INC., JUDGE WILLIAM J. REGAN, HON. MARIO A. PROCACCINO, HON. LOUIS J. LEFKOWITZ, Attorney General, State of New York and HON. GEORGE P. SHULTZ,
Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the The Ferguson Foundation, Inc. the Cameron Baird Foundation, and the Julia R. and Estelle L. Foundation, Inc. appellees/ by notice of motion dated September

Order Dismissing Appeal

24, 1974 to dismiss the appeal from the United States District Court for the Western District of New York for lack of jurisdiction be and it hereby is granted.

A. DANIEL FUSARO,
Clerk,

By EDWARD J. GUARDRO,
Senior Deputy Clerk.

Before: Hon. Leonard P. Moore,
Hon. James L. Oakes,
Hon. William H. Timbers,
Circuit Judges

Amended Complaint
(Civil Action No. 1971-592)

STATE OF NEW YORK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON,

Petitioner,

vs.

THE STATLER FOUNDATION, Statler Hilton Hotel, Buffalo, New York; CAMERON BAIRD FOUNDATION, 8877 Jennings Road, Eden, New York; THE BAIRD FOUNDATION, P.O. Box 55 Station B, Buffalo, New York; THE BUFFALO FOUNDATION, 812 Genesee Building, Buffalo, New York; WILLIAM J. CONNERS FOUNDATION, c/o HOWARD W. CLOTHIER, 795 Main St., Buffalo, N.Y., JAMES H. CUMMINGS FOUNDATION, 1106 Marine Trust Building, Buffalo, New York; HARRY DENT FOUNDATION, 1508 Genesee Building, Buffalo, New York; FERGUSON FOUNDATION, INC., 333 Ellicott Street, Buffalo, New York; JOSEPHINE GOODYEAR FOUNDATION, 1600 Liberty Bank Building, Buffalo, New York; JULIA R. and ESTELLE L. FOUNDATION, INC., 817 Washington St., Buffalo, New York; THE MARGARET L. WENDT FOUNDATION, 840 Marine Trust Building, Buffalo, New York; THE FARNY R. and GRACE K. WURLITZER, INC., c/o Wurlitzer Co., N. Tonawanda, N.Y., FRED L. EMERSON FOUNDATION, INC., 96 Genesee Street, Auburn, New York; JUDGE WILLIAM J. REGAN, Erie County Surrogate Court, Erie County Hall, Buffalo, New York 14202; HON. MARIO A. PROCACCINO, Commissioner of Taxation and Finance, State of New York, Tax and Finance Building 9, State Campus, Albany, New York; HON. LOUIS J. LEFKOWITZ, Attorney General, State of New York, Capitol, Albany, N.Y., HON. H. B. MOSHER, District Director of Internal Revenue, 111 Hunron Street, Buffalo, New York; HON. GEORGE P. SHULTZ, United States Secretary of Treasury, Washington, D.C., HON. DONALD L. ALEXANDER, Commissioner, Internal Revenue Service, Washington, D.C.,

Defendants.

Amended Complaint

1. The jurisdiction of this Court is based upon 28 USC Section 1343 and all parts thereof; 42 USC Sections 1981 and 1983 and 1985; 42 USC Section 2000a *et seq.;* Constitution of the United States, Fifth Amendment; Constitution of the United States, Fourteenth Amendment; Constitution of the United States, Fifteenth Amendment; the Federal legislation known as "The Civil Rights Act of 1964", and the preceeding Civil Rights Acts enacted by the Congress commencing with the year 1866; Rule 23 of the Federal Rules of Civil Procedure; 28 USC Section 2201 and related sections; the applicable provisions of the Internal Revenue Code, Title 26 USC Section 1 *et* 1 *et seq.*, and more particularly 26 USC Section 170; the amount involved exceeds $10,000.00 excluding costs and interest.

2. This action is brought by the plaintiff on his own behalf and on behalf of all others similarly situated in that there are common questions of law and fact affecting the rights of other persons of the same racial minority group as well as other racial minority groups as concerns equal employment rights, equal protection of laws, freedom from discrimination in the distribution of public moneys or quasi-public moneys and various other issues related thereto. This plaintiff adequately representing the class of which he is a member.

3. One of the objects of this proceeding is to obtain a declaratory judgment and incidental injunctive relief against the defendants named below, declaring that each one is no longer entitled to a tax exemption as authorized by the laws of the United States as well as the laws of the State of New York, as it is operating in violation of the Constitutions of the United States and of the State of New York and

the laws of the United States and the State of New York in that it refuses to employ plaintiff as either an officer, trustee, or director, or in any other executive or administrative position of employ any one of the members of the class represented by the plaintiff herein in the aforesaid positions because of their race and color, refuses to distribute its moneys on an equal basis with others, to the members of the class represented by the plaintiff herein and the plaintiff herein because of their race and color; because they refuse to invest their assets in businesses primarily operated by the plaintiff, members of the class represented by the plaintiff or other minority groups because of the race and color of the groups; and that its operation is in violation of the Membership Corporation Law, the Not-for-Profit Corporation Law, the Estate, Powers and Trust Law, and other laws of the State of New York and the United States, said defendants being as follows:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Foundation
g. Harry Dent Foundation
h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. and Estelle L. Foundation, Inc.
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
m. Fred L. Emerson Foundation, Inc.

4. Another object or sub-object is for an Order declaring the tax exempt status of each of the foundations named herein for the years 1969, 1970 and 1971 invalid, and further declaring that said foundations were not tax exempt for the years 1969, 1970 and 1971, and directing that the defendant Hon. George P. Schultz in his capacity as Secretary of Treasury, the defendant Hon. Donald L. Alexander in his capacity as Commissioner of the Internal Revenue Service and Hon. H. B. Mosher in his capacity as District Director of Internal Revenue to audit the books of said foundations for the periods when they had wrongfully received tax exempt status and to take such further steps as the law provides.

5. Directing that Hon. Mario A. Procaccino in his capacity as Commissioner of Taxation and Finance of the State of New York and Hon. Louis J. Lefkowitz, Attorney General of the State of New York review the New York State tax returns of the aforesaid foundations and audit them in accordance with the decision herein that they are no longer tax exempt and to take such further steps as the law provides.

6. A further object of this action is money damages be awarded to the plaintiff for his damage as a result of the refusal to employ him because of his race and color, against the following named defendants:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Foundation
g. Harry Dent Foundation

h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. and Estelle L. Foundation, Inc.
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
m. Fred L. Emerson Foundation, Inc.

7. A further object of this action is for money damages to be awarded to the plaintiff for his damage as a result of the illegal refusal to invest with the plaintiff in formation of a business, which refusal was because of his race and color, against the following defendants:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Foundation
g. Harry Dent Foundation
h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. and Estelle L. Foundation, Inc.
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
m. Fred L. Emerson Foundation, Inc.

8. A further object of this action is the prohibition of the Surrogate of the County of Erie from appointing any trustee of the Statler Foundation because the Foundation is a membership corporation (now governed by the Not-for-Profit Corporation Law) requiring appointments to

be made by a justice of the Supreme Court, County of Erie, State of New York, and further prohibiting the further appointment of trustees and officers of the Statler Foundation because appointment procedures in lieu of elections as required by Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USCS 1973, have not been complied with.

9. A further object of this action is the prohibition of the election of trustees and directors to some or all of the foundations listed above because they failed to comply with Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USCS 1973, as to the proper mode of election of trustees and directors.

10. A further object of this action is the convening of a three judge court pursuant to Title 28 of the United States Code, Section 2281, as the relief sought is an interlocutory or permanent injunction restraining the enforcement, operation or execution of statutes of the State of New York by restraining the action of an officer of such State in the enforcement or execution of said statute and of an order by the applicable administrative agency acting under the statutes of said State upon the grounds that said acts and statute are unconstitutional; also pursuant to 28 USCS Section 2282 because the relief requested is an injunction restraining enforcement, operation and execution of an Act of Congress for repugnance to the Constitution of the United States.

11. That the plaintiff is a member of the black race, a citizen of the United States, of the State of New York, of the County of Erie and a resident of the City of Buffalo; that racially he is a member of a group consisting of

approximately thirty percent of the population of the City of Buffalo and numbering in excess of one hundred thousand people, residing in the City of Buffalo and in the County of Erie and in the State of New York. Plaintiff is a graduate of grade school and high school in Retsof, New York, and attended Alabama A & M College, Alcorn A & M College, Kentucky State College, and University of Kentucky; he received a bachelor of law degree from La Salle Extension University and also from the 20th Century Bible School and New Truth School received a Doctor of Divinity degree. He served with the United States Army in both World War II and the Korean conflict; he has published local periodicals; managed local broadcasts; was president of a tax exempt educational foundation; and in 1964 was the Conservative Party endorsed candidate for State Senator from the 55th Sentatorial District; all of which information was made available to each of the following foundations:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Foundation
g. Harry Dent Foundation
h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. and Estelle L. Foundation, Inc.
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
m. Fred L. Emerson Foundation, Inc.

12. On or before November 4, 1971, plaintiff made written applications to each of the defendant foundations requesting investments in minority enterprizes and more particularly for the establishment of a bank for minority groups run by a minority administration; a pet food manufacturing company to be operated by a minority; a photo studio; no reply was received; plaintiff then conferred by phone with each foundation, the details of each conversation being as follows:

a. The Statler Foundation acknowledged receipt of the letter but stated that they would not invest in such an activity as such investments are not made by the foundation.

b. The Cameron Baird Foundation acknowledged receipt of the letter but stated they did not invest in that type of activity in that type of area.

c. The Buffalo Foundation acknowledged the communication and at a personal visit stated that it was up to the committee but also stated that the committee's investments were decided solely by the committee.

d. William J. Conners Foundation stated that they made no investments in local organizations.

e. The James H. Cummings Foundation during a personal visit by the plaintiff through its executive director requested a more detailed program which was submitted and then informed the plaintiff that they did not invest in that type of activity in that type of area.

f. The Harry Dent Foundation was contacted not only by letter but by phone with a follow-up phone call and stated that their own program would not accept a program of the type proposed by the plaintiff herein.

g. The Ferguson Foundation, Inc., informed the plaintiff by a Mr. Ferguson that they only invested in listed securities or churches.

h. The Josephine Goodyear Foundation was contacted by phone and the plaintiff was informed that they only invested in listed securities.

i. The Julia R. and Estelle L. Foundation, Inc., stated that they had no funds and therefore couldn't invest particularly as proposed by the plaintiff herein.

j. The Margaret L. Wendt Foundation was phoned and a follow-up note was sent stating that they had no funds.

k. The Farny R. and Grace K. Wurlitzer, Inc., was contacted by phone and the plaintiff was informed that they had no funds and even if they did they only invested in listed securities.

l. The Fred L. Emerson Foundation, Inc., never replied.

13. That the plaintiff has investigated and reviewed the returns of these various foundations and none of them have invested in black groups on a basis anywhere equal or in proportion to the black population in the area although a couple of foundations appear to have made token donations one of which though postdated was actually made after the commencement of this action.

14. That the defendant foundations and charities herein have denied equal benefit of the laws in that they have refused to grant to the plaintiff or his class employment, grants and investments, though they do give employment, grants and investments to whites in the community, said

grants and investments being given as a result of their tax exemption under the laws of the United States, even though the whites are not as qualified or no more qualified for employment, grants and investments than the plaintiff and his class.

15. That claiming a tax exemption as a charitable organization under both state laws and federal laws and claiming an absolute right of choice they reap the benefits of the special exemptions while depriving plaintiff and his class the benefits of their grants and investments solely because of the fact that the plaintiff and his class are black.

16. That as the result of violation of 42 USCS 1983 the plaintiff and members of his class are entitled to money damages.

17. That each of the defendant foundations or charities herein, is controlled by one or more persons who determine who will be employed, to whom grants will be given and to whom investments will be made; that said defendants conspire among their trustees and other employees to deny to the plaintiff and members of his class employment, grants and investments.

18. That as there is among the defendant foundations or charities, employees mutually employed by them who determine to whom employment, grants and investments are made that these charities or foundations have conspired to deny the plaintiff and his class employment, grants and investments solely because of their race.

19. That some or all of these defendant foundations or charities are also controlled by various corporations in that

either they hold controlling interest in the stock of the corporations or that the trustees of the corporations are also trustees of the foundation or charity and that in their interworkings with the corporations they have conspired against the plaintiff and his class in the same manner as aforesaid, denying to them employment, grants and investments.

20. That the aforesaid conspiracies are in violation of 42 USCS 1985 in that these acts are done for the specific purpose of depriving the plaintiff and members of his class the equal protection of the laws or equal privileges and immunities under the law and further that the defendants were acting under color of state law in that their acts were motivated by, and inseparably integrated with the tax exemption given them by the State of New York and with the tax exemption given them under Title 26 of the United States Code.

21. That the defendants Hon. Mario A. Procaccino, Commissioner of Taxation and Finance, State of New York, and Hon. Louis J. Lefkowitz, Attorney General, State of New York, have denied the plaintiff and his class equal protection of laws in that they have failed to prohibit the defendant foundations and charities from discriminately granting moneys and making investments to the exclusion of the plaintiff and his class, while granting said defendant foundations and charities a tax exempt status.

22. That the defendants Hon. George P. Shultz, United States Secretary of Treasury, and Hon. Donald L. Alexander, Commissioner, Internal Revenue Service, and Hon. H.P. Mosher, District Director of Internal Revenue, have denied the plaintiff and his class equal protection of laws

in that they have failed to prohibit the defendant foundations and charities from discriminately granting moneys and making investments to the exclusion of the plaintiff and his class, while granting said defendant foundations and charities a tax exempt status.

23. That the defendant foundations or charities have violated the law in that they have represented to the general public that they are a charitable organization complying with the laws of the State of New York and with the laws of the United States when in fact they have to their own knowledge practiced discrimination in employment, grants and investments, for the purposes of obtaining tangible and intangible items of value from others, all in violation of 42 USCS Section 1985 (3).

24. That some of the defendant foundations or charities have given grants to hospitals in the area which hospitals though claiming to be "charitable" institutions continue to charge the indigent members of the class suing herein the same fees as they charge those with funds in violation of the congressional and judicial requirement that the application of tax exemption for charitable organizations to hospitals be conditioned upon the demonstration that consideration is given to poor persons in need of hospitalization.

25. That Hon. William J. Regan, Erie County Surrogate, has failed to consider the appointment to the Statler Foundation of a member of the class represented herein or the plaintiff and further has allowed the Statler Foundation to continue to practice discrimination in its employment, grants and investments.

WHEREFORE, the plaintiff respectfully requests the Court to award the following relief:

a. Ordering the convening of a three-judge court as required by Sections 2281 and 2282 of 28 USCS because the plaintiff and his class demand an order enjoining the grant of tax exempt status to the defendant foundations and charities,

b. Awarding to the plaintiff, Donald L. Jackson, pursuant to the provisions of 42 USCS 1983, money damages in the amount of One Hundred Fifty Thousand ($150,000.00) Dollars for loss of employment due to the acts prohibited by 42 USCS 1983 and

c. An award of money damages to the plaintiff pursuant to 42 USCS 1983 in the amount of $6,250,000.00 for loss of business due to the deprivation of his rights to obtain funds from the defendant foundations and charities for investment purposes, and

d. The sum of $10,000.00 for each member of the class as money damages against the defendant foundations and charities for violation of 42 USCS 1981, 1983 and 1985, and

e. Awarding attorney's fees pursuant to 42 USCS 200E-5(k) in the amount of Twenty-Five Thousand ($25,000.00) Dollars against the defendant foundations or charities, and

f. A declaratory judgment declaring as a matter of law that the defendants herein have violated the Constitutional rights of the plaintiff and the class he represents, and

g. For such other and further relief as the Court may deem proper.

s/ DAVID M. YELLEN
DAVID M. YELLEN
Attorney for the Plaintiff
Office and Post Office Address
606 Genesee Building
Buffalo, New York 14202
Tel.: 716 852-6900

x/s/ Rev Donald L. Jackson
Rev. Donald L. Jackson

To:

Phillips, Lytle, Hitchcock, Blaine & Huber
Attorneys for Defendants,
James Cummings Foundation, Inc.
& The Buffalo Foundation & Farny R. and
Grace K. Wurlitzer Foundation

Brown, Kelly, Turner, Hassett & Leach
Attorneys for Defendant,
Harry Dent Family Foundation, Inc.

Hodgson, Russ, Andrews, Woods & Goodyear
Attorneys for Defendants,
Ferguson Foundation Inc. &
Cameron Baird Foundation

Williams, Stevens & McCarville
Attorneys for Defendant,
Josephine Goodyear Foundation

Hellings, Morey, Kresse & Rickers
Attorneys for Defendant,
Margaret L. Wendt Foundation

Jaeckle, Fleischmann & Mugel
Attorneys for Defendant,
Julia R. and Estelle L. Foundation, Inc

Raichle, Banning, Weiss & Halpern
Attorneys for Defendant,
The Baird Foundation

William B. Mahoney, Esq.
Attorney for Defendant,
The Statler Foundation

Wiser, Shaw, Freeman, Van Graafeiland,
Harter & Secrest
Attorneys for Defendant,
Fred L. Emerson Foundation, Inc.

Falk, Siemer, Glick, Tuppen & Maloney
Attorneys for Defendant,
William J. Conners Foundation

Complaint in Transferred Action

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REV. DONALD L. JACKSON, 494 Masten Avenue, Buffalo, New York 14209, PLEASE FORWARD ALL MAIL TO: P. O. Box 494, Buffalo, New York 14205,

Petitioner,

vs.

THE STATLER FOUNDATION, Statler Hilton Hotel, Buffalo, New York; CAMERION BAIRD FOUNDATION, 8877 Jennings Road, Eden, New York; THE BAIRD FOUNDATION, P.O. Box 55 Station B, Buffalo, New York; THE BUFFALO FOUNDATION, 812 Genesee Building, Buffalo, New York; WILLIAM J. CONNERS FOUNDATION, c/o HOWARD W. CLOTHIER, 795 Main St. Bflo, N. Y., JAMES H. CUMMINGS FOUNDATION, 1106 Marine Trust Building, Buffalo, N. Y., HARRY DENT FAMILY FOUNDATION, 1508 Genesee Building, Buffalo, N. Y., FERGUSON FOUNDATION, INC., 333 Ellicott St., Buffalo, N. Y., JOSEPHINE GOODYEAR FOUNDATION, 1600 Liberty Bank Building, Buffalo, N. Y., JULIA R. and ESTELLE L. FOUNDATION, INC., 817 Washington St., Bflo, N. Y., THE MARGARET L. WENDT FOUNDATION, 840 Marine Trust Building, Bflo., N. Y., THE FARNY R. AND GRACE K. WURLITZER, INC. c/o Wurlitzer Co. N. Towanda, N. Y., FRED L. EMERSON FOUNDATION, INC., 96 Genesee St., Auburn, N. Y., JUDGE WILLIAM J. REGAN, Erie County Surrogate Court, Erie County Hall, Buffalo, New York; HON. MARIO A. PROCACCINO, Commissioner of Taxation and Finance, State of New York, Tax and Finance Building 9, State Campus, Albany, New York; HON LOUIS J. LEFKOWITZ, Attorney General, State of N. Y. Albany, N. Y., HON. GEORGE P. SHULTZ, United States Secretary of Treasury, Washington, D. C.,

Defendants.

No. 74-499.

Complaint in Transferred Action

1. The jurisdiction of this Court is based upon 28 USC Section 1343 and all parts thereof; 42 USC Section 1981, 1982, 1983 and 1985; 42 USC Section 20002 *et seq.*; Constitution of the United States, Article IV, Section 2, Constitution of United States Amendment XIV, Constitution of United States Amendment XV, Constitution of United States, Amendment XVII, Constitution of United States Amendment XXIV, the Federal Legislation known as "The Civil Rights Act of 1964" and "The Civil Rights Act of 1965" and the preceding Civil Rights Acts enacted by the Congress commencing with the year 1866, 28 USC Section 2201 and related Sections; the applicable provisions of the Internal Revenue Code, Title 26 USC Section 1 et 1 *et seq.*, and more particularly 26 USC Section 170, and the amount involved exceeds $10,000.00 excluding cost and intrest.

2. This action is brought by the plaintiff on his own behalf concerns, the right to vote and hold office, equal voting rights, equal protection of laws, freedom from discrimination in the distribution of public moneys or quasi-public moneys and various other issues related thereto.

3. One of the objects of this proceeding is to obtain a declaratory judgment and incidental injunctive relief against the defendants named below, declaring that each one is no longer entitled to tax exemption as authorized by the laws of the United States as well as the laws of the State of New York, as it is operating in violation of the Constitution of the United States and of the State of New York and the laws of the United States and the States of New York in that it refuses to employ plaintiff as either an officer, trustee, or director, or in any other executive or administrative position of employ any one because of his race and

color; defendants foundations refuses to distribute its moneys on equal basis with plaintiff a Black man as they do to Whites; Defendants foundations refuse to invest their assets in businesses primarily operated by Plaintif because of his race, and that their operation is in violation of laws of the State of New York and the United States, said defendants being as follows:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Fou. lation
g. Harry Dent Family Foundation
h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
j. Julia R. Estelle L. Foundation, Inc.
k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
m. Fred L. Emerson Foundation, Inc.

4. Another object or sub-object is for an Order declaring the tax exempt status of each of the foundations named herein for the years 1969, 1970 and 1971 invalid and further declaring that said foundations were not tax exempt for the years 1969, 1970 and 1971, and directing that the defendant Hon. George P. Shultz in his capacity as Secretary of Treasury, to audit the books of said foundations for the periods when they had wrongfully received tax exempt status and to take such further steps as the law provides.

5. Directing that Hon. Mario A. Procaccino in his capacity as Commissioner of Taxation and Finance of the State of New York and Hon. Louis J. Lefkowitz, Attorney General of the State of New York review the New York State tax returns of the aforesaid foundations and audit them in accordance with the decision herein that they are no longer tax exempt and to take such further steps as the law provides.

6. A further object of this action is money damages be awarded to the plaintiff for his damage as a result of the refusal to allow him to vote, and to employ and to invest in plaintiff businesses because of his race and color, against the following named defendants:

a. The Statler Foundation
b. Cameron Baird Foundation
c. The Baird Foundation
d. The Buffalo Foundation
e. William J. Conners Foundation
f. James H. Cummings Foundation
g. Harry Dent Family Foundation
h. Ferguson Foundation, Inc.
i. Josephine Goodyear Foundation
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k. The Margaret L. Wendt Foundation
l. The Farny R. and Grace K. Wurlitzer, Inc.
. fred L. Emerson Foundation, Inc.

7. A further object of this action is for money damage to be awarded to the plaintiff for his damage as a result of the illegal refusal to invest with the plaintiff in formation of a

business, which refusal was because of his race and color, against each of the defendant foundations.

8. A further object of this action is the prohibition of the Surrogate of the County of Erie from appointing any trustee of the Statler Foundation because the Foundation is a membership corporation (now governed by the Not-for-Profit Corporation Law) requiring appointments to be made by a justice of the Supreme Court, County of Erie, State of New York, and further prohibiting the further appointment of trustees and officers of the Statler Foundation because appointment procedures in lieu of elections as required by Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USCS 1973, have not been complied with, and further prohibition of the Surrogate of the County of Erie from going beyond its authority, by appointing life time directors or trustees of the Statler Foundation at life time salaries of $30,000 per year.

9. A further object of this action is the prohibition of the election of trustees and directors to some or all of the foundations because they failed to comply with Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USCS 1973, as to the proper mode of election of trustees and directors.

10. A further object of this action is the convening of a THREE JUDGE COURT, pursuant to Title 28 of the United States Code, Section 2881, and 2884, as the relief sought is an interlocutory or permanent injunction restraining the enforcement, operation or execution of statutes of the State of New York by restraining the action of an Officer or such State in the enforcement or execution of said statute and of an order by the applicable administrative agency act-

ing under the statutes of said state upon the grounds that said acts and Statute are unconstitutional; also pursuant to 28 USCS Section 2282 and 2284 because the relief requested is an injunction restraining enforcement operation and execution of an Act of Congress for repugnance to the Constitution of the United States.

11. That the PLAINTIFF IS A MEMBER OF THE Black race, a citizen of the United States of the State of New York, of the County of Erie and a resident of the City of Buffalo; plaintiff is a graduate of grade school and high school in Retsof, New York, and attended Alabama A & M College, Alcorn A & M College, Kentucky State College, and taken courses from the University of Kentucky; received a Bachelors of Law Degree, from LaSalle Extension University after studying law 4 years, studying religion from 20th Centraury Bible School and New Truth School and receive a Doctor of Divinity Degree. Plaintiff served with the United States Army in both World War II and the Korean conflict; and received Honorable Discharge; he has published local periodicals; managed local boardcasts; was president of a tax exempt educational foundation for over 7 years; and in 1964 was the Conservative Party endorsed candidate for State Senator from the 55 Senatorial District; all of which information was made available to each of the defendant foundations.

12. On or before November 4, 1971, plaintiff made written applications to each of the defendant foundations requesting investments in minority enterprises and more particularly for the establishment of a bank for minority groups run by a minority administration; a pet food manu-

facturing company to be operated by a minority; a photo studio; no reply was received; plaintiff then conferred by phone with each foundation the details of each conversation being as follows:

a. The Statler Foundation acknowledged receipt of the letter but stated that they would not invest in such an activity as such investments are not made by the foundation.

b. The Cameron Baird Foundation acknowledged receipt of the letter but stated they did not invest in that type of activity in that type of area.

c. The Buffalo Foundation acknowledged the communication and at a personal visit stated that it was up to the committee but also stated that the committee's investments were decided solely by the committee.

d. William J. Conners Foundation stated that they made no investments in local organizations.

e. The James H. Cummings Foundation during a personal visit by the plaintiff through its executive director requested a more detailed program which was submitted and then informed the plaintiff that they did not invest in that type of activity in that type of area.

f. The Harry Dent Family Foundation was contacted not only by letter but by phone with a follow-up phone call and stated that their own program would not accept a program of the type proposed by the plaintiff.

g. The Ferguson Foundation, Inc., informed the plaintiff by a Mr. Ferguson that they only invest in listed securities or churches.

h. The Josephine Goodyer Foundation was contacted by phone and the plaintiff was informed that they only invest in listed securities.

i. The Julia R. and Estelle L. Foundation, Inc., stated that they had no funds and therefore couldn't invest particularly as proposed by plaintiff he—.

j. The Margaret L. Wendt Foundation was phoned and a follow-up note was sent stateing that they had no funds.

k. The Farny R. and Grace K. Wurlitzer, Inc., was contacted by phone and the plaintiff was informed that they had no funds and even if they did they only invested in listed securities.

l. The Fred L. Emerson Foundation, Inc., never replied.

13. That plaintiff has investigated and reviewed the taxs returns of these various foundations and none of them have invested in black groups on a basis anywhere equal or in proportion to the Black population in the area, infect none of the defendant foundation has ever invested in any Black business, a couple of foundations appear to have made in token donations one of which though postdated was actually made after the commencement of this action.

14. That the letter plaintiff mailed to each of the defendants foundations on November 4 1971, asking for scholarships for my children, was rejected by each of the defendant foundations, because it was not their policy to give educational grants to Blacks. Numerous requests were made to each of defendant foundations between 1969 and 1971, and on each occasion I was rejected because of my race.

That each of the defendant foundations has assets about the figure indicated after each name:

The Statler Foundation	$11,407,420
Cameron Baird Foundation	$ 4,346,322
The Baird Foundation	$ 2,769,575
The Buffalo Foundation	$ 8,400,000
william J. Conners Foundation	$ 1,000,000
James H. Cummings Foundation	$ 2,000,000 or $ 6,000,000
cHarry Dent Family Foundation	$ 2,813,010
Ferguson Foundation	$ 159,000
Josephine Goodyear Foundation	$ 1,659,374
Julia R. and Estelle L Foundation	$ 6,333,077
The Margaret L. Wendt Foundation	$ 742,796
The Farny R. and Grace K. Wurlitzer, Inc., Foundation	$ 1,522,052 or $ 8,000,000
Fred L. Emerson Foundation	$19,475,106

The following foundations are controlled by the family by all or majority of the Directors are members of the family.

Cameron Baird Foundation
The Baird Foundation
Harry Dent Family Foundation
Josephine Goodyear Foundation
Ferguson Foundation
Fred L. Emerson Foundation

the following foundations are controlled by the corporation, by the same officers of the foundation are the same officers of the corporation that donated the funds.

Cameron Baird Foundation
The Baird Foundation
William J. Conners Foundation
Ferguson Foundation
Julia R. and Estelle L.
The Frany R and Grace K. Wurlitzer, Inc.
Fred L. Emerson

15. That the defendant foundations and charities herein have HAVE DENIED PLAINTIFF EQual benefit of the laws in that they have refused to grant to plaintiff grants, employment and investments, though they do give employment, grants and investments to whites in the community, said grants and investments being given as a result of their tax exemption under the laws of the United States, even though the whites are not as qualified or no more qualified for employment, grants and investment that plaintiff.

16. That claiming a tax exemption as a charitable organization under both state laws and federal laws and claiming an absolute right of choice they reap the benefits of the special exemptions while depriving plaintiff the benefits of their grants and investments solely because plaintiff is Black.

17. That as the results of violation of 42 USCS 1983, 1981, 1982, plaintiff is entitled to money damages.

18. That each of the defendant foundations or charities herein, is controlled by one or more persons who determine who will be employed, to whom grants will be given and to

whom investments will be made, that said defendants conspire among their trustees and other employees to deny to plaintiff grants and investments and employment.

19. That as there is among the defendant foundations or charities, employees mutually employed by them who determine to whom employment, grants and investments are made that these charities or foundations have conspired to deny to plaintiff employment, grants and investments solely because of his race.

20. That some or all of these defendant foundations or charities are also controlled by various corporations in that either they hold controlling intrest in the stock of the corporations or that that trustees of the corporations are also trustees of the foundation or charity and that in their interworkings with the corporations they have conspired against plaintiff in the same manner as aforesaid, denying to plaintiff employment, grants and investments.

21. That the aforesaid conspiracies are in violation of 42 USCS 1985 in that these acts are done for the specific purpose of depriving the plaintiff and equal protection of the laws or equal privileges and immunities under the law and further that the defendants foundations were acting under color of state law in that their acts were motivated by, and inseparably integrated with the tax exemption given them by the State of New York and with the tax exemption given them under Title 26 of the United States Code.

22. That the defendants Hon. Mario A. Procacino, Commissioner of Taxation and Finance, State of New York, and Hon. Louis J. Lefkowitz, Attorney General, State of New York, have denied plaintiff equal protection of laws in that

they have failed to prohibit the defendant foundations and charities from discriminately granting moneys and making investments to the exclusion of the plaintiff, while granting said defendant foundations and charities a tax exempt status.

23. That the defendant Hon. George P. Shultz, United States Secretary of Treasury, have denied plaintiff equal protection of laws in that they have failed to prohibit the defendant foundations and charities from discriminately granting moneys and making investments to the exclusion of plaintiff, while granting said defendant foundations and charities a tax exemption status.

24. That the defendant foundations or charities have violated the law in that they have represented to the general public that they are a charitable organization complying with the laws of the State of New York and with the laws of the United States when in fact they have to their own knowledge practiced discrimination in employment, grants and investments, for the purpose of obtaining tangible and intangible tems of value from others, all in violation of 42 USCS Section 1985(3).

25. that Hon. William J. Regan, Erie County Surrogate, has failed to consider the appointment to the Statler Foundation of plaintiff and further has allowed the Statler Foundation to continue to practice discrimination in its employment, grants and investments.

WHEREFORE, the plaintiff respectfully request the Court to award the following relief:

a. ordering the convening of a three-judge court as required by Sections 2281, 2282 and 2284 of 28 USCS because

plaintiff demand an order enjoining defendants from depriving plaintiff the right to vote and hold office and to enjoining the grant of tax exempt status to the defendant foundations and charities.

b. awarding to the plaintiff, Rev. Donald L. Jackson, pursuant to the provisions of 42 USCS 1983, money damages in the amount f One hundred fifty thousand ($150,000.00) Dollars for depriving plaintiff the right to vote and hold office acts prohibited by XV Amendment to United States Constitution.

c. Awarding to plaintiff, Rev. Donald L. Jackson, pursuant to the provisions of 42 USCS 1983, money damages in the amount of $600,000.00 Six Hundred Thousand Dollars, from the Statler Foundation, and One Hundred Fifty Thousand ($150,000.00) for loss of employment due to the acts prohibited by 42 USCS 1983 and from each of the other 12 defendant foundations or charities and

d. An award of money damages to the plaintiff pursuant to 42 USCS 1983 in the amount of $6,500,000.00 for loss of business due to the deprivation of his rights to obtain funds from the defendant foundations and charities for investment purposes, and

e. a declaratory judgment declaring as a matter of law that he defendants herein have violated the Constitutional rights of the Plaintiff and

f. for such other and further relief as the Court may deem proper.

EXHIBITS 1, 2, attached herewith.

Complaint in Transferred Action

NOTE TO THE COURT:

THIS LAWSUIT WAS FILED IN THE WESTERN DISTRICT OF U.S. COURT FOR NEW YORK STATE. ON DEC. 27, 1971, docket No. CIV 1971-592, March 7, 1973, Judge Curtin, dismissed the lawsuit, stating there was no STATE ACTION, over 10 cases were cited, this case was appealed the the Court of Appeals using the same court cases, and the Court of Appeals for the 2nd Circuit, reversed Judge Curtins decision.

The Court of Appeal stated that Plaintiff, could not ask to have the foundations tax exemption revoked unless United States Treasury and the New York State Tax Commissioner was a party, and suggested that the complaint be amended. The Court of Appeal also stated that i could not represent a foundation, for I was not an lawyer, I have left out of this cimplaint any claim for the foundation. The Amended complaint was filed in the District Court for the Western District of New York, Judge Curtin, immediately gave each defendant foundation 40 days to answer after the complaint was served. Judge Curtins reserved decision on permission to amend the complaint. This amended complaint was argued before Judge Curtin, with a request for a Three Panel Judge Court, on March 11, 1974. The 1964 and 1965 Civil Rights Act clearly states the Court of Jurisdiction list the United States DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

The Congressional Record United States Senate for October 22, 1965 Page 28368 and 28369, Senator Ervin, offered an Amendment to the Voting Rights Bill, to give the District Court for the District of Columbia, permission to removal of cases to other jurisdiction for the convenicence

of witnesses and for the ends of justice, the amendment as defeated leaving jurisdiction only with the United States District Court for the District of Columbia. The reason that the Congress established in the law continual pages of the discussion, indicated he Seanate, found that Judge in the District Court, would not rule against local officials for discriminating. This same situation exist here in Western New York, The Statler Foundation, two trustees Mr. Crotty and Mr. Mahoney, are former Erie County Democratic Chairmans, and one of them recommended the present Judge o the position of U. S. Attorney, and for the Judgeship. There s only one Judge, in this Court now. Judge Henderson, died. I cite these fact, for its evident that attorneys for defendant foundations will fight to keep this case in the District Court where they have a friend.

The Act requires that a Three-Panel Court be appointed within 20 ays after it has been requested, and that an immediate hearing, this will never be accomplished here in this Western District Court of New York State. Justice Delayed is Justice Denied. The amended complaint, filed in the Western District Court of New York STate, will be withdrawn as soon as the District Court of the District of Columbia, assumes jurisdiction of this case.

s/ REV. DONALD L. JACKSON,
(Rev. Donald L. Jackson)

state of new york
COUNTY OF ERIE
CITY OF BUFFALO

REV. DONALD L. JACKSON, being duly sworn deposes and says that he is Petitioner in this action that he has read the complaint and knows that contents thereof: that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to these matters he believes it to be rue.

/s/ REV. DONALD L. JACKSON,
(Rev. Donald L. Jackson)

SWORN TO BEFORE ME THIS 26th DAY OF MARCH 1974.

/s/ Rosemary A. Ligotti,
Notary Public State of New York,
My comm. Expires March 30, 1975.

(Exhibits 1 and 2, excerpts from Congressional Record—Senate, pp. 28368-28369 (October 22, 1965) omitted.)

Memorandum and Order Transferring Action

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

REV. DONALD L. JACKSON,

Plaintiff,

v.

THE STATLER FOUNDATION, *et al.*,

Defendants.

Civil Action No. 74-499.

The plaintiff herein filed this action in this Court on March 28, 1974, alleging in part exclusive jurisdiction in this Court by reason of the Voting Rights Act of 1965, 42 U.S.C. 1973. From a reading of the complaint in this action, this Court concludes that there is no showing of a cause of action under 42 U.S.C. 1973.

Furthermore, plaintiff's complaint alleges that this lawsuit was previously filed in the United States District Court for the Western District of New York and is presently pending therein.

In the instant case, all but one of the seventeen named defendants are residents of New York, and the locally named defendant is George P. Shultz, who is sued in his capacity as Secretary of the Treasury. The plaintiff's suit seeks to compel the Secretary to audit the books of the named Foundation defendants. Without passing on the

merits, this action so far as it pertains to the Secretary of the Treasury is in the nature of a mandamus, and it is clear that the United States District Court for the Western District of New York would have jurisdiction over such an action. "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C.A. § 1361.

Title 28, United States Code Annotated, section 1404(a), states: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

This Court finds that for the convenience of parties and witnesses, and in the interest of justice, transfer of this case to the United States District Court for the Western District of New York is proper.

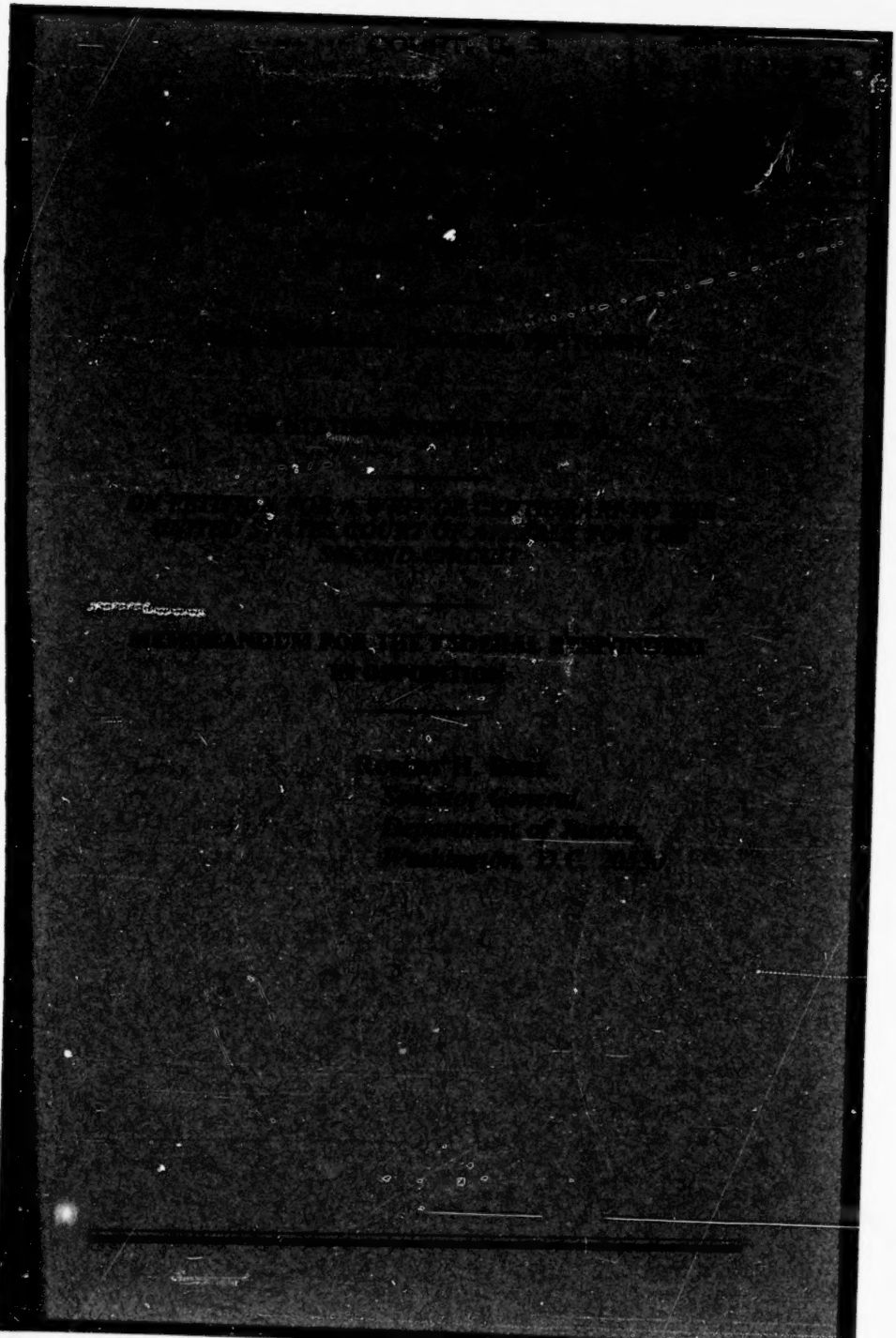
Wherefore, it is this 2nd day of April, 1974, *sua sponte*,

ORDERED that this action be and the same is hereby transferred to the United States District Court for the Western District of New York.

WM. B. JONES,
Judge.

Rev. Donald L. Jackson,
P. O. Box 494,
Buffalo, New York 14205.

Nathan Dodell,
Assistant United States Attorney,
United States Courthouse,
Washington, D. C. 20001.



In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-677

REV. DONALD L. JACKSON, PETITIONER

v.

THE STATLER FOUNDATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

The sole issue raised by the petition is whether the court of appeals correctly held that an order of the district court staying all further proceedings was not final or appealable.

Petitioner brought this action in the United States District Court for the District of Columbia against 13 charitable organizations, several officials of New York State, and the Secretary of the Treasury. He alleged, *inter alia,* that the charitable organizations refused to employ him, to grant scholarships to his children and to invest in his proposed minority business ventures solely because he was black. Petitioner also alleged that this racially discriminatory conduct constituted impermissible state action because the Secretary of the Treasury and the

named New York officials had granted tax-exempt status to these charitable organizations. He sought a three-judge court, damages and declaratory and injunctive relief requiring the termination of the tax-exempt status of the charitable organizations.

Because petitioner had a nearly identical suit in progress in the United States District Court for the Western District of New York, the district court, *sua sponte*, transferred this case to that district. With the exception of the Commissioner of Internal Revenue and the District Director of Buffalo, New York, the parties in the latter suit were identical to those in this case and petitioner's grounds for relief were essentially the same in both actions.[1]

Shortly after the transfer of this case, the District Court for the Western District of New York stayed all proceedings in this action until further order. The court stated that it found the two actions nearly identical, and that it would be unjust and impractical to proceed with both suits at the same time. It also denied petitioner's motion for summary judgment (Pet. App. 3-c to 5-e).

Petitioner thereafter moved the district court to terminate the stay to vacate the denial of his motion for summary judgment and to convene a three-judge court (Pet. App. 6-f to 7-g). The district court denied petitioner's motion (Pet. App. 12-k), and the court of appeals dismissed petitioner's appeal on the ground that the district court's order was not final or appealable (Appendix, *infra*, pp. 5-14).

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[1]Petitioner's action in the Western District of New York had been dismissed on the pleadings in March 1973, after pre-trial discovery by the defendant-charitable organizations. The court of appeals (496 F. 2d 623) affirmed in part, reversed in part and remanded the case to the district court. On remand, the district court granted petitioner leave to amend his complaint and to add additional parties, as the court of appeals suggested (Pet. App. 15-n).

1. The district court's order refusing to terminate the stay of proceedings in this action is not an appealable "final" order within the meaning of 28 U.S.C. 1291. The order was interlocutory and not dispositive of any "claims of right separable from * * * rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen* v. *Beneficial Loan Corp.*, 337 U.S. 541, 546. See also *Baltimore Contractors* v. *Bodinger*, 348 U.S. 176; *Standard Chlorine of Delaware, Inc.* v. *Leonard*, 384 F. 2d 304 (C.A. 2); *New England Power Co.* v. *Asiatic Petroleum Corp.*, 456 F. 2d 183 (C.A. 1); *Weight Watchers of Phila.* v. *Weight Watchers Int., Inc.*, 455 F. 2d 770 (C.A. 2). Indeed, even giving the finality requirement a "practical rather than a technical construction," *Cohen* v. *Beneficial Loan Corp., supra*, 337 U.S. at 546, the district court's order is not final since petitioner's essentially identical action originally brought in the Western District of New York has been allowed to proceed in that court so that the district court's order in this case has not effectively forced petitioner out of court. Cf. *Idlewild Liquor Corp.* v. *Epstein*, 370 U.S. 713, 715, n. 2. To the contrary, the order was within the discretion of the district court as a means of controlling petitioner's litigation. *Baltimore Contractors* v. *Bodinger, supra*, 348 U.S. at 185; *Enelow* v. *N.Y. Life Ins. Co.*, 293 U.S. 379, 382.

2. Petitioner also asks this Court to review the district judge's failure to recuse himself. Petitioner, however, did not submit the required affidavit under 28 U.S.C. 144, and the district court's order does not relate to the recusal issue. At all events, a judge's failure to recuse himself is not directly appealable. *E.g., Vuono* v. *United States,* 441 F. 2d 271 (C.A. 4).

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1975.

APPENDIX

UNITED STATES COURT OF APPEALS

Second Circuit

* * *

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentysecond day of October , one thousand nine hundred and seventy-four.

Rev. Donald L. Jackson, PLAINTIFF-APPELLANT.

v.

The Statler Foundation, Camerion Baird Foundation, The Baird Foundation, William J. Conners Foundation, James H. Cummings Foundation, Harry Dent Family Foundation, Ferguson Foundation, Inc., Josephine Goodyear Foundation, Julia R. and Estelle L. Foundation, Inc. The Margaret L. Wendt Foundation, The Farny R. and Grace K. Wurlitzer, Inc., Fred L. Emerson Foundaation, Inc. Judge William J. Regan, Hon. Mario A. Procaccino, Hon. Louis J. Lefkowitz, Attorney General State of New York and Hon. George P. Shultz, Defendants-Appellees.

It is hereby ordered that upon consideration of the motion made herein by counsel for the

APPELLEE Camerion Baird Foundation

by notice of motion dated September 18, 1974 to dismiss the appeal from the United States District Court for the Western District of New York and for lack of jurisdiction with costs that the motion to dismiss be and it hereby is granted.

A. Daniel Fusaro
Clerk

By
Senior Deputy Clerk

BEFORE: HON. LEONARD P. MOORE
HON. JAMES L. OAKES
HON. WILLIAM H. TIMBERS
Circuit Judges

UNITED STATES COURT OF APPEALS

Second Circuit

* * *

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentysecond day of October , one thousand nine hundred and seventy-four.

Rev. Donald L. Jackson, PLAINTIFF-APPELLANT.

v.

The Statler Foundation, Camerion Baird Foundation, The Baird Foundation, William J. Conners Foundation James H. Cummings Foundation, Harry Dent Family Foundation, Ferguson Foundation, Inc., Josephine Goodyear Foundation, Julia R. and Estelle L. Foundation, Inc., The Margaret L. Wendt Foundation, The Farny R. and Grace K. Wurlitzer, Inc., Fred L. Emerson Foundaation, Inc., Judge William J. Regan, Hon. Mario Procaccino, Hon. Louis J. Lefkowitz, Attorney General State of New York and Hon. George P. Shultz,
Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the

APPELLEE Julia R. and Estelle L. Foundation, Incorporated

dated September 18, 1974 to dismiss the appeal from the United States District Court for the Western District of New York for lack of jurisdiction be and it hereby is granted.

A. Daniel Fusaro
Clerk

By
Senior Deputy Clerk

BEFORE: HON. LEONARD P. MOORE
HON. JAMES L. OAKES
HON. WILLIAM H. TIMBERS
Circuit Judges

UNITED STATES COURT OF APPEALS

Second Circuit

* * *

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentysecond day of October , one thousand nine hundred and seventy-four.

Rev. Donald L. Jackson, PLAINTIFF-APPELLANT.

v.

The Statler Foundation, Camerion Baird Foundation, The Baird Foundation, William J. Conners Foundation James H. Cummings Foundation, Harry Dent Family Foundation, Ferguson Foundation, Inc., Josephine Goodyear Foundation, Julia R. and Estelle L. Foundation, Inc., The Margaret L. Wendt Foundation, The Farny R. and Grace K. Wurlitzer, Inc., Fred L. Emerson Foundaation, Inc., Judge William J. Regan, Hon. Mario A. Procaccino, Hon. Louis J. Lefkowitz, Attorney General State of New York and Hon. George P. Shultz, Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the

APPELLEE Judge William J. Regan

by notice of motion dated September 23, 1974 to dismiss the appeal from the United States District Court for the Western District of New York for lack of jurisdiction, be and it hereby is granted.

A. Daniel Fusaro
Clerk

By
Senior Deputy Clerk

BEFORE: HON. LEONARD P. MOORE
HON. JAMES L. OAKES
HON. WILLIAM H. TIMBERS
Circuit Judges

UNITED STATES COURT OF APPEALS

Second Circuit

* * *

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentysecond day of October , one thousand nine hundred and seventy-four.

Rev. Donald L. Jackson, PLAINTIFF-APPELLANT.

v.

The Statler Foundation, Camerion Baird Foundation, The Baird Foundation, William J. Conners Foundation James H. Cummings Foundation, Harry Dent Family Foundation, Ferguson Foundation, Inc., Josephine Goodyear Foundation, Julia R. and Estelle L. Foundation, Inc., The Margaret L. Wendt Foundation, The Farny R. and Grace K. Wurlitzer, Inc., Fred L. Emmerson Foundaation, Inc., Judge William J. Regan, Hon. Mario A. Procaccino, Hon. Louis J. Lefkowitz, Attorney General State of New York and Hon. George P. Shultz, Defendants-Appellees.

It is hereby ordered that upon consideration of the motion made herein by counsel for the

APPELLEE The Ferguson Foundation, Inc.

by notice of motion dated September 18, 1974 to dismiss the appeal from the United States District Court for the Western District of New York for lack of jurisdiction with costs that the motion to dismiss be and it hereby is granted.

A. Daniel Fusaro
Clerk

By
Senior Deputy Clerk

BEFORE: HON. LEONARD P. MOORE
HON. JAMES L. OAKES
HON. WILLIAM H. TIMBERS
Circuit Judges

UNITED STATES COURT OF APPEALS

Second Circuit

* * *

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentysecond day of October , one thousand nine hundred and seventy-four.

Rev. Donald L. Jackson, PLAINTIFF-APPELLANT.

v.

The Statler Foundation, Camerion Baird Foundation, The Baird Foundation, William J. Conners Foundation James H. Cummings Foundation, Harry Dent Family Foundation, Ferguson Foundation, Inc., Josephine Goodyear Foundation, Julia R. and Estelle L. Foundation, Inc., The Margaret L. Wendt Foundation, The Farny R. and Grace K. Wurlitzer, Inc., Fred L. Emerson Foundaation, Inc., Judge William J. Regan, Hon. Mario A. Procaccino, Hon. Louis J. Lefkowitz, Attorney General State of New York and Hon. George P. Shultz, Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the

APPELLEE The Ferguson Foundation, Inc., the Cameron for the Western District of New York for lack of jurisdiction be and it hereby is granted.

by notice of motion dated September 24, 1974 to dismiss the appeal from the United States District Court for the Western District of New York for lack of jurisdiction be and it hereby is granted.

A. Daniel Fusaro
Clerk

By
Senior Deputy Clerk

BEFORE: HON. LEONARD P. MOORE
HON. JAMES L. OAKES
HON. WILLIAM H. TIMBERS
Circuit Judges